

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4802 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?  
No.

-----

GUJARAT RAJYA KAMDAR SABHA

Versus

REGISTRAR

-----

Appearance:

MR HK RATHOD for Petitioner

MR VB GHARANIYA, Ld. AGP for Respondents

-----

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 11/08/98

ORAL JUDGEMENT

Rule. Mr. V.B. Gharaniya, learned AGP waives service of notice of rule.

2. The petitioner-Gujarat Rajya Kamdar Sabha a trade union registered under the Trade Unions Act, 1926 has filed the present petition to challenge the order of cancellation of their registration passed by the respondent on 29.9.97. The petitioner has challenged the

said order by preferring an Appeal No.1/98 before the Industrial Tribunal, Surat, under the provisions of Section 11(A) of the Trade Unions Act, 1926. The said appeal was dismissed on 29.4.98. Hence, the petitioner has come before this court under Article 226 and 227 of Constitution of India.

3. The action taken against the present petitioner is taken under the provisions of section 10(b) of the Trade Unions Act, 1926. If the provisions of the said section are considering, then it would be quite clear that the provision of section 10(b) lays down that a show-cause-notice for a period not less than two months must be served by the Registrar on the Trade Union before taking action of either withdrawal or cancellation of registration of the said union. The petitioner has raised the contention not only before this court but also before the Industrial Tribunal that a show-cause-notice as provided by proviso to section 10(b) was not served on the petitioner-union. The Industrial Tribunal has negatived the said contention of the present petitioner. It is necessary to consider this aspect and to find out as to whether the finding recorded by the Industrial Tribunal in rejecting the claim of the petitioner that they had not received the show-cause-notice is either grossly erroneous or perverse in view of the material on record.

4. The copy of the said show-cause-notice was produced before the Industrial Tribunal which is produced at page no.159 to this petition. A postal acknowledgment receipt pertaining to have been signed by the office bearer of the present petition was also produced before the Industrial Tribunal and the copy of the same is produced at page no.161. The copy of the notice produced on record shows that the notice does not bear the registered address of the petitioner-union. Even the postal acknowledgment receipt also does not bear the registered address of the petitioner-union on the postal acknowledgment. Therefore, it was urged before the Industrial Tribunal that the claim of the department that the said show-cause-notice was received by the petitioner-union should not be accepted in view of the production of the copy of the said show-cause-notice as well as the postal acknowledgment receipt. To meet the said contention of the department, it was urged before the Industrial Tribunal by the petitioner that as the postal acknowledgment receipt does not bear the registered postal address of the petitioner-union, the claim of the department should not be accepted. The Industrial Tribunal had accepted the claim of the

petitioner that the postal acknowledgment receipt does not bear the registered postal address of the petitioner-union, but, he went on to assume that the envelope through which the said notice must have been sent must be bearing the postal registered address of the petitioner-union. But the Industrial Tribunal had not taken into consideration the copy of the show-cause-notice which is produced on record. When the copy of the show-cause-notice is not bearing the registered postal address of the petitioner-union and when the postal acknowledgment is also not bearing the registered postal address of the petitioner-union, then it is very difficult to assume that, on the envelope containing the said notice there must be postal address of the petitioner-union. It is very pertinent to note that no affidavit had been filed by the department before the Industrial Tribunal that there was a registered postal address on the envelope. When the show-cause-notice, the postal acknowledgment receipt and the postal registered address is prepared at one and the same time and when the copy of the show-cause-notice and the postal acknowledgment receipt are not bearing the registered postal address of the petitioner-union, then it becomes very difficult to presume or to assume that the postal envelope must be bearing registered postal address of the petitioner-union. When the two documents were not bearing the same, it is more probable that the third document must also not bearing the registered postal address. It is very pertinent to note that it is claim of the petitioner-union that the postal acknowledgment receipt produced on record is not bearing the signature of any office bearer of the petitioner-union. It is further pointed out that the said postal acknowledgment receipt also does not bear the rubber stamp of the petitioner-union for having received the registered envelope and the signature of the office bearer of the petitioner-union. When the union has filed the affidavit in support of their contention that they have not received the said show-cause-notice and that the postal acknowledgment receipt does not bear any signature of the office bearer and when the postal acknowledgment receipt does not bear the registered postal address of the petitioner-union, the general presumption that the letter must have been received by the addressee in view of the absent of the registered postal address could not be drawn in the present case. Even if such presumption could be their in view of the specific contention supported by the affidavit of the petitioner-union, the said presumption stands rebutted.

5. There is also another material on record to

accept the contention of the union. In the show-cause-notice, the copy of this notice at page 159 certain grounds are taken for taking the action under section 10(b). If the order of cancellation passed on 29.9.97 is considered, then it would be quite clear that the said order is not dealing with the grounds raised in the show-cause-notice. The first ground is taken in the show-cause-notice was that the union had played fraud and had fraudulently obtained an order of registration. Admittedly, there was no reply of the union on the said show-cause-notice. The Deputy Labour Commissioner has also not mentioned in the order that any material was produced before him except one complaint filed by another rival union. Therefore, in these circumstances, what has happened about the first ground taken in the show-cause-notice is not clear from the order. If the order of the Deputy Labour Commissioner is considered, then it would be quite clear that he is relying more on the letters sent on 2.4.97, 2.5.97 and 25.6.97. There is no reference of the show-cause-notice except in the concluding portion of the order. But there is also very pertinent to mention that in the order also, there is no mention that the petitioner-union was duly served with the show-cause-notice and the same was received by the petitioner-union, but inspite of the same the petitioner-union has not filed any reply to the show-cause-notice. While referring to the letters issued by him to the petitioner-union, the Deputy Labour Commissioner had not taken into consideration the reply given by the union, wherein it is mentioned that one of the letter dtd.2.5.97 was received by the union on 14.5.97, when the said letter was asking the union to appear before him on 7.7.97. It must also be mentioned here that union had informed the Deputy Labour Commissioner that their President was in jail on account of involvement in some private criminal prosecution and therefore they had sought time to give reply to the letters. The contention of the department that the duty to maintain account was of the Secretary and therefore the remaining of the President in the jail could not be the ground for not supplying the information regarding the accounts is accepted by the Industrial Tribunal. But merely because it is the duty of the Secretary to maintain the accounts could it be said that the claim of the union that the account are lying in the custody of the President and therefore they are not in a position to produce before him is an impossibility or improbability.

6. But any way in view of the specific stand taken by the union that they have not received the show-cause-notice and in view of the material on record

it is not possible to hold that their claim is false, it could not be said that the action against the petitioner-union is just and proper. As pointed out earlier, the Industrial Tribunal has not taken into consideration the fact that neither the copy of the show-cause-notice nor the postal acknowledgment receipt is bearing the registered postal address of the petitioner-union. The postal acknowledgment receipt is also not even bearing the rubber stamp of the union for having received the notice, and the union had taken a stand that the postal acknowledgment receipt produced does not bear any signature of any office bearer and the union had filed an affidavit in support of all contention. The Industrial Tribunal has also not taken into consideration that in the order of cancellation there is no base of the show-cause-notice. It is also not mentioned that the show-cause-notice was duly served on the union and in spite of this the petitioner-union had not given reply. The findings recorded by the Industrial Tribunal that the show-cause-notice must have been received by the union is grossly erroneous resulted into miscarriage of justice. The Industrial Tribunal also did not taken into consideration the conduct of the union. The union has admitted of having received all the earlier letters and they have also given reply to all earlier letters. When that is the conduct of the union, and when there is the question of cancellation of their registration, it is not probable that the union will fail to give reply to the show-cause-notice within 60 days. Had the Tribunal taken into consideration this conduct of the union alongwith the above circumstances, then he would not have come to the conclusion as a prudent man to which he had arrived at. Therefore, in these circumstances, I hold that the findings recorded by the Industrial Tribunal that the show-cause-notice was received by the union will have to be interfered with by allowing the present petition. I, therefore, hold that the order of cancellation of the registration of the union passed by the Deputy Labour Commissioner on 29th September, 1997, is to be quashed and set aside and I quash and set it aside. In view of getting the copy of the show-cause-notice during the pendency of this proceedings by the petitioner-union, I direct the petitioner-union to give its reply to the said show-cause-notice within 60 days from today, and on getting the said reply and after giving an opportunity of being heard to the union, the Deputy Labour Commissioner will be at liberty to pass an appropriate order according to law. It is also made quite clear that if the Deputy Labour Commissioner wants to make use of the complaint received from the rival union then he should supply the

copy of the same to the petitioner within two weeks from today.

7. Thus, the present petition is allowed as indicated above. Rule is made absolute accordingly. In the facts and circumstances of the case, parties are directed to bear their respective costs.

\*\*\*\*\*

syed\*